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## Attorneys for Defendants

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

BYUNG HOON CHUNG, individually; ) No. C 07-5554 SC  
DUK BONG CHUNG, individually; )  
MYUNG BIN CHUNG, individually; )  
KUO CHUL CHUNG, individually; on behalf )  
of themselves and all others similarly situated, )  
Plaintiffs, )  
v. )  
MICHAEL MUKASEY, Attorney General )  
of the United States; DEPARTMENT OF )  
HOMELAND SECURITY; MICHAEL )  
CHERTOFF, Secretary of DHS; )  
and DOES 1 through 20, inclusive )  
Defendants. )  
**DEFENDANTS' STATUS REPORT**  
Date: May 23, 2008  
Time: 10:00 a.m.

The defendants wish to inform the Court that the United States Court of Appeals for the Ninth Circuit has today denied the Chungs' petition for review in *Chung v. Mukasey*, Appeal No. 06-728. A copy of the Ninth Circuit's memorandum disposition is attached.

In the memorandum disposition, the Ninth Circuit expressly rejects the Chungs' equitable estoppel claim, stating:

The Chungs' argument that the government should be equitably estopped from pursuing their removal is equally unavailing. The Chungs claim they were the victims of a fraud committed by Leland Sustaire, a supervisory official at the INS. As we recently held in another case stemming from this same scheme, "Sustaire was a government employee who took bribes and engaged in fraud, crimes for which he

# STATUS REPORT

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1 was convicted. There is no dispute that Sustaire's acts were unauthorized. Thus,  
2 the threshold requirement for applying equitable estoppel against the government –  
3 that the government authorized the acts – “is not satisfied in this case.” *Shin*, 519  
F.3d at 907.

4 Accordingly, even if this Court did have jurisdiction over the Chungs' district court action  
5 despite the REAL ID Act, the action would have to be dismissed because the Ninth Circuit's  
6 holding is law of the case and the plaintiffs are barred by the doctrines of law of the case and res  
7 judicata from re-litigating their claims here.

8 Dated: May 13, 2008

JOSEPH P. RUSSONIELLO  
9 United States Attorney

10  
11 /s/  
12 EDWARD A. OLSEN  
13 Assistant United States Attorney  
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